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Date:
December 21, 2020

Legend

Company	=
DB Plan	=
DC BU Plan	=
DC NBU Plan	=
Merged Plan	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Date 11	=
Date 12	=
Date 13	=
Date 14	=
Date 15	=
Date 16	=
Amount 1	=
Amount 2	=

Amount 3 =

Dear :

This letter is in response to your request dated May 26, 2020, as supplemented by correspondence dated November 10, 2020, November 19, 2020, December 9, 2020, and December 15, 2020, in which you request rulings concerning the proper treatment under § 4980 of the Internal Revenue Code of a transfer of surplus assets from a terminated defined benefit plan to an ongoing defined contribution plan.

The following facts and representations have been submitted under penalties of perjury:

The Company established the DB Plan on Date 1. The DB Plan is a defined benefit plan which, since its inception, has been qualified under § 401(a).

The DB Plan is an amalgamation of a number of separate defined benefit plans for both bargaining unit and non-bargaining unit employees that were merged over many years into one plan with numerous benefit schedules. The DB plan was terminated in a standard termination under section 4041(b) of the Employee Retirement Income Security Act of 1974, effective Date 5 (the Termination Date), and a Standard Termination Notice was filed with Pension Benefit Guaranty Corporation (PBGC) for the DB Plan on Date 6. On the Termination Date, the only active employees covered by the DB Plan were two separate groups of bargaining unit employees and two separate groups of non-bargaining unit employees. Prior to the Termination Date, the benefits of one group of active bargaining unit employees were frozen on Date 2 and the benefits of the second group of active bargaining unit employees were frozen on Date 4. The benefits of both groups of non-bargaining unit were frozen on Date 3. After Date 4, the DB Plan continued in operation as a frozen plan.

Whenever defined benefit accruals were frozen under one of the Company's defined benefit plans, Company-sponsored defined contribution benefits for affected active employees were provided or enhanced. The DC BU plan is a qualified volume submitter defined contribution plan which includes 401(k) deferrals, fixed employer nonelective contributions and fixed employer matching contributions. It received a favorable opinion letter from the Internal Revenue Service (IRS) dated Date 10. The terms of the DC BU plan provided that it serves as a replacement plan to the DB plan for the bargaining unit employees.

The DC NBU Plan is a qualified prototype defined contribution plan for non-bargaining unit employees. The Company significantly enhanced the DC NBU Plan, effective as of Date 4, by adding a percent Company non-elective contribution. The DC NBU Plan was further enhanced a year later by increasing the Company fixed non-elective contributions to percent and the fixed match from percent to percent on the first percent deferred. The DC NBU Plan was amended on Date 9 to eliminate fixed non-elective employer contributions and fixed matching contributions, but to retain discretionary nonelective employer contributions and revised discretionary matching contributions. The DC NBU Plan received a favorable opinion letter from the IRS on Date 11. Its terms provided that it serves as a replacement plan to the DB Plan for non-bargaining unit employees.

On Date 12, the DC BU Plan was merged into the DC NBU Plan to form the Merged Plan. On the merger date, each participant's account balance in the Merged Plan immediately after the merger was equal the participant's account balances in the DC NBU Plan or the DC BU Plan immediately prior to the merger, the Merged Plan continues to be designated as a qualified replacement plan under § 4980(d). The Merged Plan is a calendar year plan.

The IRS issued a favorable determination letter as to the effect of the termination of the DB Plan on its qualified status on Date 7. On Date 8, annuities were purchased from insurance carriers. The finalization of the annuity contracts and distribution of all annuity certificates to participants, surviving spouses, other beneficiaries, and alternative payees was expected to be mostly completed within approximately days after the date of the favorable determination letter with a final true-up expected to be completed within approximately year of Date 7.

Prior to the plan termination, the actuary for the DB Plan estimated that the plan had a deficit on a termination basis. Accordingly, in August , the Company made a contribution of Amount 1 for the plan year . By Date 8, the actuary estimated that the DB Plan had changed from a deficit to a surplus status of approximately Amount 2, principally because of investment returns, window period distributions, and favorable annuity market conditions on the annuitization date. On Date 13, following a final true-up of liabilities, the remaining surplus in the DB Plan was Amount 3.

The DB Plan was amended in conjunction with its termination to permit the Company, in its discretion, to use all or part of any surplus funds in any other manner permitted by law, including, for example, and without limitation, transfer to a qualified replacement plan and/or a pro rata increase in accrued benefits of participants in the resulting plan as provided in § 4980(d).

Immediately after the termination of the DB Plan on Date 5, percent of the participants in the DB Plan who remained as current employees of the Company were active participants in either the DC BU Plan or the DC NBU Plan. As of Date 8, percent of those participants who remained as current employees of the Company were active participants in either the DC BU Plan or the DC NBU Plan.

On Date 14, the Board of Directors of Company adopted a resolution authorizing certain discretionary matching contributions and discretionary nonelective contributions under the Merged Plan.

On Date 15, after all plan liabilities had been satisfied and the true-up was finalized, and before the reversion of any surplus funds to the Company, the trustee of the DB Plan made a direct transfer from the DB Plan to the Merged Plan of an aggregate amount equal to the total amount of the DB Plan's remaining surplus.

The surplus transferred on Date 15 to the Merged Plan was credited to a suspense account in the Merged Plan. The suspense account will be used to fund (after the offset of forfeitures) all or a portion of employer fixed non-elective contributions due in accordance with the terms of the Merged Plan and discretionary non-elective contributions permitted under the terms of the Merged Plan. In addition, the suspense account will be used to fund discretionary matching contributions and true-up matching contributions with respect to elective deferrals made from payrolls paid from Date 9 up to and including Date 16. Date 16 is prior to Date 15. The suspense account will not be applied to fund employer matching contributions with respect to elective deferrals made from payrolls paid after Date 16. The allocation from the suspense account will be no less rapidly than rapidly as ratably over the plan-year period beginning with the year of the transfer, as measured by the Company on periodic intervals designated by the Company, which will be at least annual. Any income earned by the suspense account will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the allocation period under the same procedure.

Any amounts allocated from the suspense account in the Merged Plan attributable to the transfers from the DB Plan and any income earned thereon will be treated as employer contributions for purposes of §§ 401 and 415.

The business reason for the proposed transactions outlined above is to effectuate the Company's objective to maintain, operate, and provide assured funding for the Merged Plan as an appropriate replacement plan to the DB Plan by applying 100 percent of the DB Plan's surplus funds in accordance with the terms of the replacement plan.

Based on the forgoing facts and correspondence, the following rulings have been requested:

1. The Merged Plan constitutes a "qualified replacement plan" for purposes of § 4980(d)(2) that has been established and maintained in connection with the termination of the DB Plan.

2. The direct transfer from the DB Plan to the Merged Plan of an aggregate amount equal to 100 percent of the maximum amount that the Company could receive as an employer reversion from the DB Plan will be treated as follows:

    a. the amount transferred will not be included in the gross Income of the Company;
    b. no deduction will be allowable with respect to the amount transferred; and

c. the amount transferred will not be treated as an employer reversion for purposes of § 4980, and the Company will not be subject to excise tax under section § 4980(a) with respect to such amount transferred.

3. The allocation of the aggregate amount of the direct transfer from the DB Plan in accordance with the terms of the Merged Plan, is consistent with the treatment of the Merged Plan as a qualified replacement plan for the purposes and requirements of section 4980(d)(2).

4. The crediting of the amounts transferred from the DB Plan to a suspense account in the Merged Plan and the allocation of the suspense account to fund (after the offset of forfeitures) all or a portion of the periodic employer fixed non-elective contributions due in accordance with the terms of the Merged Plan, any discretionary non-elective contributions permitted under the terms of the Merged Plan, and certain discretionary matching contributions with respect to elective deferrals made from payrolls paid between Date 9 and Date 16, no less rapidly than ratably over a plan-year period beginning with the year of transfer and ending on the last day of the plan year after the plan year of transfer, with the minimum ratable drawdown of the suspense account measured by the Company on periodic intervals designated by the Company over such allocation period, and the allocation of any income earned by the suspense account at least as rapidly as ratably on the same periodic basis over the remainder of such allocation period under the same procedure, will satisfy the allocation requirement of § 4980(d)(2)(C).

5. In view of the fact that the NBU Plan and the BU Plan were separate plans on the Termination Date and Annuitization Date and that § 4980 does not expressly authorize two replacement plans to be treated as a single qualified replacement plan absent the Secretary's ruling under § 4980(d)(5)(D), and the delays in finalizing the true-up, retaining the surplus either in the DB plan trust or in the suspense account for the Merged Plan for more than one year after receipt of a favorable determination letter as to the DB Plan's qualified status upon its termination will not be treated as a failure to distribute plan assets as soon as administratively feasible, will not void the DB Plan's termination, and will not cause the DB Plan trust to be treated as a wasting trust, where distribution of the surplus was delayed pending finalization of annuity contracts, true-up premium and possible receipt of a private letter ruling on the transfer of the surplus to a replacement plan, and all plan benefits have been distributed and liabilities assumed within said one-year period.

Section 4980(a) provides for a 20 percent excise tax on the amount of any reversion from a qualified plan. Section 4980(d)(1) provides, in pertinent part, that the excise tax under § 4980(a) shall be increased to 50 percent with respect to any employer reversion from a qualified plan unless the employer either establishes or maintains a qualified replacement plan, or the plan provides for certain benefit increases which take effect immediately on the termination date.

Section 4980(c)(2) generally defines the term "employer reversion" as the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

Section 4980(d)(2) provides that a qualified replacement plan is a qualified plan established or maintained by the employer in connection with a qualified plan termination, which satisfies the participation, asset transfer, and allocation requirements of §§ 4980(d)(2)(A), (B), and (C).

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan.

Section 4980(d)(2)(B) requires that a direct transfer from the terminated plan to the replacement plan be made before any employer reversion, and that the transfer be an amount equal to the excess (if any) of (i) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to § 4980(d), over (ii) the amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment adopted during the 60-day period ending on the date of termination of the qualified plan, and which takes effect immediately on the termination date.

Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under § 4980(d)(2)(B)(i) from a terminated plan, such amount is not includible in the gross income of the employer, no deduction is allowable with respect to such transfer, and the transfer is not treated as an employer reversion for purposes of § 4980.

Section 4980(d)(2)(C)(i) provides that, if the replacement plan is a defined contribution plan, the amount transferred to the replacement plan must be (i) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or (ii) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the seven plan-year period beginning with the year of the transfer.

Section 4980(d)(2)(C)(ii) provides that if, by reason of any limitation under § 415, any amount credited to a suspense account under § 4980(d)(2)(C)(i)(ll) may not be allocated to a participant before the close of the seven plan-year period, such amount shall be allocated to the accounts of other participants, and if any portion of such amount may not be allocated to other participants by reason of any such limitation, it shall be allocated to the participant as provided in § 415.

Section 4980(d)(2)(C)(iii) provides that any income on any amount credited to a suspense account under § 4980(d)(2)(C)(i)(ll) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii) regarding limitation under § 415).

Section 4980(d)(2)(C)(iv) provides that if any amount credited to a suspense account under § 4980(d)(2)(C)(i)(ll) is not allocated as of the termination date of the replacement plan, (I) such amount shall be allocated to the accounts of the participants as of such date, except that any amount which may not be allocated by reason of any limitation under § 415 shall be allocated to the accounts of other participants, and (II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which § 4980 applies.

Revenue Ruling 2003-85, 2003-32 I.R.B. 291 (Rev. Rul. 2003-85), provides that in accordance with § 4980(d)(2)(B)(iii), the direct transfer of an amount that is at least 25 percent of the maximum amount which the employer could receive as an employer reversion from a terminated plan which was transferred to a qualified replacement plan is not includible in the employer's gross income. In addition, the IRS held that no deduction was allowable with respect to the amount transferred, and the amount transferred was not treated as an employer reversion. Further, the IRS concluded that any amount that the employer received would be subject to the 20 percent excise tax under § 4980(a) and would be includible in income under § 61.

Under § 501(a), an organization described in § 401(a) (that is, a trust which is part of a qualified pension, profit-sharing or stock bonus plan) is generally exempt from taxation.

Section 401(m)(4)(A) defines matching contributions as employer contributions made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, or on account of an employee’s elective deferral.

Section 1.401(m)-1(a)(2)(i) provides that matching contributions are, (A) any employer contribution (including a contribution made at the employer's discretion) to a defined contribution plan on account of an employee contribution to a plan maintained by the employer; (B) any employer contribution (including a contribution made at the employer's discretion) to a defined contribution plan on account of an elective deferral; and (C) any forfeiture allocated on the basis of employee contributions, matching contributions, or elective deferrals.

Section 1.401(m)-1(a)(2)(ii) provides, in pertinent part, that whether an employer contribution is made on account of an employee contribution or an elective deferral is determined on the basis of all the relevant facts and circumstances, including the relationship between the employer contribution and employee actions outside the plan.

Section 1.401(m)-1(a)(2)(iii)(A) provides generally that employer contributions are not matching contributions made on account of elective deferrals if they are contributed before the cash or deferred election is made or before the employees' performance of services with respect to which the elective deferrals are made (or when the cash that is subject to the cash or deferred elections would be currently available, if earlier). In addition, an employer contribution is not a matching contribution made on account of an employee contribution if it is contributed before the employee contribution.

With respect to ruling requests 1, 3, and 4, in order for the Merged Plan to constitute a qualified replacement plan for purposes of § 4980(d)(2), the Merged Plan must satisfy the requirements of § 4980(d)(2)(A) through (C).

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan. You have represented that percent of the active participants of the DB Plan who remained employees of Company on Date 5, the DB Plan Termination Date, were eligible to participate in either the DC BU Plan or the DC NBU Plan, and that the Merged Plan continued to meet the 95 percent requirement as of Date 15. Therefore, the Merged Plan satisfies the requirements of § 4980(d)(2)(A).

You have also represented that the Company transferred to the Merged Plan an aggregate amount equal to the total amount of the DB Plan's remaining surplus after all plan liabilities have been satisfied. In accordance with Rev. Rul. 2003-85, the transfer of at least 25 percent of the maximum amount which the employer could receive as an employer reversion satisfies the requirement of § 4980(d)(2)(B).

Further, you have represented that the amount transferred from the DB Plan to the Merged Plan is expected to be allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or credited to a suspense account in the plan and allocated to accounts of participants no less rapidly than ratably over a

year period including the year of the transfer, and that the allocations will otherwise be made in accordance with the requirements of § 4980(d)(2)(C). Therefore, we conclude that the crediting of the amounts transferred from the DB Plan to the suspense account in the Merged Plan and the allocation of such suspense account to fund (after the offset of forfeitures) all or a portion of any periodic employer fixed non-elective contributions due in accordance with the terms of the Merged Plan or any discretionary non-elective contributions permitted under the terms of the Merged Plan no less rapidly as ratably over a year period beginning with the year of transfer and ending on the last day of the year after the plan year of transfer, with the minimum ratable drawdown of the suspense account measured by the Company on periodic intervals designated by the Company over such allocation period, and the allocation of any income earned by the suspense account at least as rapidly as ratably on the same periodic basis over the remainder of such allocation period under the same procedure, will satisfy the allocation requirement of § 4980(d)(2)(C).

With respect to the use of a portion of the amount of surplus transferred to the Merged Plan to fund discretionary matching contributions, § 1.401(m)-1(a)(2)(iii)(A) generally prohibits an employer from funding a matching contribution before the deferral elections are made or the services to which the elective deferrals relate are performed (or when the cash that is subject to the cash or deferred elections would be currently available, if earlier). However, in this case, the surplus was used to fund only matching contributions that relate to elective deferrals made from payrolls paid up to and including Date 16, a date which is prior to the transfer of the surplus to the Merged Plan, so that the surplus was contributed after the deferral elections/performance of services. Therefore, the matching contributions are not disallowed under § 1.401(m)-1(a)(2)(iii)(A). Accordingly, we rule that the fund in the suspense account may be used to fund discretionary matching contributions and true-up matching contributions with respect to elective deferrals made from payrolls paid from Date 9 up to and including Date 16. However, the suspense account may not be applied to fund employer matching contributions with respect to elective deferrals made from payrolls paid on or after Date 15.

Based on the above analysis, we rule that the Merged Plan constitutes a qualified replacement plan within the meaning of § 4980(d)(2).

With respect to ruling request 2, because the Merged Plan constitutes a qualified replacement plan within the meaning of § 4980(d)(2), the direct transfer from the DB Plan to the Merged Plan of an aggregate amount equal to 100 percent of the maximum amount that the Company could have received as an employer reversion from the DB Plan will be treated as follows:

a. the amount transferred will not be included in the gross income of the Company;

b. no deduction will be allowable with respect to the amount transferred; and

c. the amount transferred will not be treated as an employer reversion for purposes of § 4980, and the Company will not be subject to excise tax under § 4980(a) with respect to that amount.

Regarding ruling request 5, we rule that the transfer of the surplus assets in the DB Plan to the suspense account for the Merged Plan on Date 15, which was more than a year after the DB Plan received a favorable determination letter from the IRS on its termination and prior to receiving this private letter ruling, will not be treated as a failure to distribute plan assets as soon as administratively feasible, will not void the DB Plan's termination, and will not cause the DB Plan trust to be treated as a wasting trust.

The rulings contained in this letter are based on the representation that the DB Plan, the DC BU Plan, the DC NBU Plan, and the Merged Plan are or were qualified under § 401(a) and that their related trusts are or were tax-exempt under § 501(a) at all times relevant to this ruling letter.

The rulings contained in this letter are based upon information and representations submitted by you and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2020-1, 2020-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2020-1, § 11.05.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Laura B. Warshawsky
Chief, Qualified Plans Branch 1
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

cc: